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JAN 24 1992

DIVISION OF
OIL GAS & MINING

3809/UT055
UT-055-92-02N
UT-055-92-03N

January 22, 1992

Earl W. Copfer, Jr.
E & B Ceramics and Jewelry
4519 Windcrest Circle
West Valley City, Utah 84120

Dear Mr. Copfer:

Your notice to conduct mining related operations on your claims, EB #1 in T. 19 S., R. 8 W., Section 23 and EB #2 in T. 24 S. R. 9 W., Section 10, was received on January 14, 1992, and has been accepted by this office. Because of the distance between claims your notice has been assigned case file numbers UT-055-92-02N and UT-055-92-03N respectively. Please use these numbers in any future correspondence concerning this notice. Your previous case file related to these claims, UT-055-91-02N has been administratively closed and combined into the new case files.

If you change your operation from what is described in your notice, please contact this office prior to the change. If your operations extend for more than one year, please advise this office of the status of your mining related activity on the anniversary date of your notice.

A copy of your notice has been sent to the Utah Division of Oil, Gas and Mining (DOGM); therefore, you will not have to file this notice with DOGM. However, reclamation under this notice is required to conform to the standards of the Utah Mined Land Reclamation Act. Also, all mining claimants and operators that plan to use, store, or divert water are required by Utah statute to notify the Utah Department of Water Resources at:

1636 West North Temple
Salt Lake City, Utah 84180-1203

As required by 43 CFR 3809, Surface Management Regulations, reasonable measures must be taken to prevent unnecessary or undue degradation of public lands during your operations. Please notify this office upon completion of operations and reclamation, so an inspection may be conducted on the site.

It is our preliminary opinion that the obsidian which it is your intent to mine on the claim in T. 24 S., R9 W., Section 10 is a common variety material and as such is not subject to location under the general mining laws, but is only available for disposal through sale. This position is based upon the results of US vs. Mansfield, 35 IBLA 95 (1978) which held that obsidian is a common

variety mineral because it occurs in almost limitless quantities. It is possible that uncommon varieties of obsidian exist. In *McClarty v. Secretary of the Interior*, 408 F.2d 907, 908 (9th Cir. 1969), the Court set standards to distinguish between common varieties and uncommon varieties:

1. There must be a comparison of the mineral deposit in question with other deposits of such minerals generally;
2. The mineral deposit in question must have a unique property;
3. The unique property must give the deposit a distinct and special value;
4. If the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and
5. The distinct and special value must be reflected in the market place (or in reduced cost or overhead so that the profit to the claimant would be substantially more).

The material in which you are interested may have a unique property - snowflake. This unique property may give this material special value. However, this material will be used in lapidary work, which is the same use to which other obsidian is put. Therefore, for this material to be uncommon variety, it must have substantially greater value than other obsidians. We have been unable to locate conclusive evidence that this is, in fact, the case.

Should a final determination by the Department of Interior be made that this material is, in fact, "common variety", you could be responsible to the United States for the value of this material, damage to the land, and the administrative costs of recovering such compensation.

Acceptance of your notice will not now, nor in the future, serve as a determination of the validity nor ownership of any mining claims included under your notice.

Thank you for submitting your notice. If you have any questions regarding this letter, please contact Rody Cox at (801) 743-6811.

Sincerely,

SIGNED

Dave Henderson
Area Manager

cc. Jerry Reagan, Millard County Planning and Zoning
D. Wayne Hedberg, DOGM

RC:mfr